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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Mark et al.  
Appl. No.: 09/759,037 ✓  
Filed: January 10, 2001  
Title: CALORICALLY DENSE NUTRITIONAL CORPORATION  
Art Unit: 3136  
Examiner: S. Sharach  
Docket No.: 112701-138

Commissioner for Patents  
Washington, DC 20231

TECH CENTER 1600/2500

AUG 06 2002

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*not approved*  
*6/7/02*  
*8/16/02*

### TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING REJECTION

Sir:

I, Robert M. Barrett, an attorney of record, do hereby state that Nestec S.A. is the owner of the entire right, title and interest to U.S. Application Serial No. 09/759,037. The terminal part of any patent granted on U.S. Application Serial No. 09/759,037 which would extend beyond the expiration date of U.S. Patent No. 5,661,123, U.S. Patent No. 6,200,950 and U.S. Patent No. 5,549,905 is hereby disclaimed and it is hereby agreed that any patent so granted on the above-identified U.S. Application Serial No. 09/759,037 shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent No. 5,661,123, U.S. Patent No. 6,200,950 and U.S. Patent No. 5,549,905, this agreement to run with any patent granted on the above-identified application and to be binding upon the grantee, its successors or assigns.

The evidentiary documents have been reviewed and it is hereby certified that to the best of my knowledge and belief that title to the above-identified patent application is in the name of Nestec S.A.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. § 154 to § 156 and § 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321, has all claims cancelled by a reexamination certificate, is reissued, or is any manner terminated prior to the expiration of its full statutory term as presently shorted by any terminal disclaimer.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

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